

The Ohio Supreme Court recently considered whether a school district may convert inside millage from operating expenses to permanent improvement expenditures where (i) doing so results in a net increase in the amount of tax revenue to the school district by operation of the "20-mill floor," and (ii) the school district's budget did not show that the increased effective outside millage rate (and revenue) was "clearly required" for both the school district's permanent improvements and operating expenses under Section 5705.341 of the Ohio Revised Code. *Sanborn v. Hamilton Cty. Budget Comm.*, 2014 Ohio 5218 (December 2, 2014).

In this case, the Board of Education of the Indian Hill Exempted Village School District (School District) adopted a resolution converting the purpose of 1.25 mills of its inside millage from operating expenses to permanent improvement expenditures. That conversion had the effect of reducing the School District's effective outside millage for operating expenses from 20.17 mills to the "20-mill floor," and resulted in a net increase in revenue to the School District amounting to approximately 1.08 mills.

The School District demonstrated before the County Budget Commission that the 1.25 mills converted to permanent improvement expenditures were matched to budgeted permanent improvement expenditures, but did not demonstrate that the General Fund revenue from the increased effective outside millage rate generated by the movement of the 1.25 mills and the operation of the "20-mill floor" was necessary to cover operating expenses during the ensuing fiscal year. The County Budget Commission approved the School District's levy conversion, and the Board of Tax Appeals affirmed that approval. The taxpayers challenging the levy conversion appealed the decision to the Ohio Supreme Court.

The Ohio Supreme Court held that the "rate of taxation" requiring review and approval by the County Budget Commission under the statute encompasses not only the 1.25 mills that the School District converted from operating expenses to permanent improvements, but also the estimated 1.08-mill increase in the effective outside millage rate for current expenses that resulted from the conversion. See Ohio Revised Code § 5705.341. Accordingly, Section 5705.341 of the Ohio Revised Code required the County Budget Commission to determine whether the 1.25 mills converted to permanent improvements were matched to permanent improvement expenditures and whether the 1.08 mills were "clearly required" to address current operating expenses in the ensuing fiscal year. *Id.* In determining the latter not to be the case, the Ohio Supreme Court emphasized that "the increased revenue from the outside mills padded the district's surplus" in its operating fund and did not "correlate to current expenditures."

In deciding this case, the Ohio Supreme Court noted that "[n]othing in this opinion should be construed to disapprove, as a general matter, the discretion of a board of education to budget with a surplus," that "[a] school district is generally entitled to collect revenue under its inside millage and its voter-approved mills . . . while maintaining a significant balance of unencumbered funds," and that the disposition of this case depended upon "an unusual circumstance."

If you have any questions regarding this Ohio Supreme Court decision, please contact the Squire Patton Boggs lawyer with whom you work.